

## NOTICES OF PROPOSED SUMMARY RULEMAKING

The Administrative Procedure Act allows an agency to use the summary rulemaking procedure instead of the regular rulemaking procedure for repeals of rules made obsolete by repeal or supersession of an agency's statutory authority or the adoption, amendment, or repeal of rules that repeat verbatim existing statutory authority granted to the agency. An agency initiating summary rulemaking shall file the proposed summary rulemaking with the Governor's Regulatory Review Council and the Secretary of State's Office for publication in the next available issue of the *Register*. The proposed summary rule takes interim effect on the date of publication in the *Register*.

### NOTICE OF PROPOSED SUMMARY RULEMAKING

#### TITLE 12. NATURAL RESOURCES

#### CHAPTER 6. ARIZONA STATE MUSEUM

#### PREAMBLE

#### 1. Sections Affected

#### Rulemaking Action

Article 1	Repeal
R12-6-101	Repeal
R12-6-102	Repeal
Article 2	Repeal
R12-6-201	Repeal
R12-6-202	Repeal
R12-6-203	Repeal
R12-6-204	Repeal
R12-6-205	Repeal
R12-6-206	Repeal
Article 3	Repeal
R12-6-301	Repeal
R12-6-302	Repeal
R12-6-303	Repeal
R12-6-304	Repeal
R12-6-305	Repeal
R12-6-306	Repeal
R12-6-307	Repeal
R12-6-308	Repeal
R12-6-309	Repeal
R12-6-310	Repeal
Article 4	Repeal
R12-6-401	Repeal
R12-6-402	Repeal
R12-6-403	Repeal
R12-6-404	Repeal
R12-6-405	Repeal
R12-6-406	Repeal
R12-6-407	Repeal
R12-6-408	Repeal
R12-6-409	Repeal
R12-6-410	Repeal
R12-6-411	Repeal
R12-6-412	Repeal
R12-6-413	Repeal
R12-6-414	Repeal
R12-6-415	Repeal
R12-6-416	Repeal
R12-6-417	Repeal
R12-6-418	Repeal
Article 5	Repeal
R12-6-501	Repeal
R12-6-502	Repeal
R12-6-503	Repeal

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Article 6	Repeal
R12-6-601	Repeal
Article 7	Repeal
R12-6-701	Repeal
R12-6-702	Repeal
R12-6-703	Repeal
R12-6-704	Repeal
R12-6-705	Repeal
R12-6-706	Repeal
R12-6-707	Repeal
R12-6-708	Repeal
R12-6-709	Repeal
R12-6-710	Repeal
R12-6-711	Repeal
R12-6-712	Repeal
R12-6-713	Repeal
R12-6-714	Repeal

2. The specific authority for the rulemaking including both the authorizing statute (general) and the statutes the rules are implementing (specific):

Authorizing statute: A.R.S. § 15-1626(A)(1)

Implementing statute: A.R.S. §§ 15-1631 and 41-841 et seq.

3. The interim effective date of the proposed summary rules:

July 25, 1997

4. The name and address of agency personnel with whom persons may communicate regarding the rule:

Name: Raymond H. Thompson, Director  
Administrative Division

or

John H. Madsen, Research Specialist, Senior  
Research Division

Address: Arizona State Museum  
University of Arizona  
Tucson, Arizona 85721

Telephone: (520) 621-6281 (Richard H. Thompson) or (520) 621-2096 (John H. Madsen)

Fax: (520) 621-2976

5. An explanation of the rule, including the agency's reasons for initiating the rule:

In 1981 the Arizona State Legislature adopted HB 2005, Education. In this legislation, A.R.S. § 15-1626 gave the Arizona Board of Regents (ABOR) power to enact ordinances for the government of the institutions under its jurisdiction. HB 2005 also reaffirmed ABOR authority to direct and manage the Arizona State Museum (§ 15-1631).

The Arizona Antiquities Act of 1960, A.R.S. Title 41, Chapter 4.1, Article 4 (Archaeological Discoveries) consists of A.R.S. §§ 41-841 through 41-846. This Act has been administered by the Arizona State Museum since 1960. The Museum adopted implementing rules to the Act which appear in 12 A.A.C. 6. However, because the Arizona State Museum is an institution under the ABOR and because the ABOR has authority to make rules for institutions under its jurisdiction, it is the ABOR rather than the Arizona State Museum that has authority to adopt rules to implement the Arizona Antiquities Act.

A.R.S. § 41-1005(D) exempts the ABOR from the Arizona Administrative Procedure Act under its adopted rules. In 1991, ABOR adopted rules for the administration of the Arizona Antiquities Act under the heading of Chapter 8, §§ 8-101 through 8-107 (ABOR Code of Ordinances and Regulations). These ABOR rules contain the same text and language as the rules for the Arizona Antiquities Act found in 12 A.A.C. 6.

A.R.S. § 41-1027(A)(1) authorizes use of summary rulemaking to repeal rules that have become obsolete by supersession of the agency authority. Because the Arizona State Museum does not have authority for the rules at 12 A.A.C. 6, it is necessary to repeal them.

6. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:

Not applicable.

7. The preliminary summary of the economic, small business, and consumer impact:

Not applicable pursuant to A.R.S. § 41-1055(D)(2).

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8. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:

Not applicable.

9. The time, place, and nature of the proceedings for the adoption, amendment, or repeal of the rule or, if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:

No oral proceedings or hearings are scheduled. A person may submit written comments or request that an oral proceeding be held on the repeal of these rules by submitting the comments or a written request for hearing no later than 5 p.m., August 30, 1997, to:

Name: Raymond H. Thompson, Director  
Administrative Division

or

John H. Madsen, Research Specialist, Senior  
Research Division

Address: Arizona State Museum  
University of Arizona  
Tucson, Arizona 85721

Telephone: (520) 621-6281 (Richard H. Thompson) or (520) 621-2096 (John H. Madsen)

Fax: (520) 621-2976

10. An explanation of why summary proceedings are justified.

In 1981 the Arizona State Legislature adopted HB 2005, Education. In this legislation, A.R.S. § 15-1626 gave the Arizona Board of Regents (ABOR) power to enact ordinances for the government of the institutions under its jurisdiction. HB 2005 also reaffirmed ABOR authority to direct and manage the Arizona State Museum (§ 15-1631).

The Arizona Antiquities Act of 1960, A.R.S. Title 41, Chapter 4.1, Article 4 (Archaeological Discoveries) consists of A.R.S. §§ 41-841 through 41-846. This Act has been administered by the Arizona State Museum since 1960. The Museum adopted implementing rules to the Act which appear in 12 A.A.C. 6. However, because the Arizona State Museum is an institution under the ABOR and because the ABOR has authority to make rules for institutions under its jurisdiction, it is the ABOR rather than the Arizona State Museum that has authority to adopt rules to implement the Arizona Antiquities Act.

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A.R.S. § 41-1027(A)(1) authorizes use of summary rulemaking to repeal rules that have become obsolete by supersession of the agency authority. Because the Arizona State Museum does not have authority for the rules at 12 A.A.C. 6, it is necessary to repeal them.

11. Any other matters prescribed by statute that are applicable to the specific agency or any specific rule or class of rules:

None.

12. Incorporations by reference and their location in the rules:

None.

13. The full text of the rules follows:

**TITLE 12. NATURAL RESOURCES**

**CHAPTER 6. ARIZONA STATE MUSEUM**

**ARTICLE 1. GENERAL**

**Section**

- R12-6-101. Definitions  
R12-6-102. General coverage

**ARTICLE 2. PERMIT APPLICATION AND REVIEW**

**Section**

- R12-6-201. Types of permits issued  
R12-6-202. Permit application requirements  
R12-6-203. Review of permit applications  
R12-6-204. Permits  
R12-6-205. Amendments to permits  
R12-6-206. Permit revocation

**ARTICLE 3. CONDITIONS FOR WORK UNDER PERMITS**

**Section**

- R12-6-301. General conditions of field work  
R12-6-302. Blanket permit project notification  
R12-6-303. Survey  
R12-6-304. Excavation  
R12-6-305. General reporting requirements  
R12-6-306. Basic records  
R12-6-307. Information included in management reports  
R12-6-308. Information included in research reports  
R12-6-309. Blanket permit summary report requirements  
R12-6-310. Receipt from the repository

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**ARTICLE 4. DISPOSITION OF COLLECTIONS AND RECORDS**

Section	
R12-6-401.	Definitions
R12-6-402.	Permits and repositories
R12-6-403.	Public repository
R12-6-404.	Permanence of the repository
R12-6-405.	Repository agreements
R12-6-406.	Applicant institution repository
R12-6-407.	Inspection of the repository
R12-6-408.	Accession and documentation
R12-6-409.	Conservation
R12-6-410.	Storage
R12-6-411.	Temporary loans
R12-6-412.	Transfer and disposal of collections
R12-6-413.	Dissolution of repository
R12-6-414.	Determination of failure to comply with requirements for repositories
R12-6-415.	Failure to comply during the effective period of a permit
R12-6-416.	Failure to comply after termination of a permit
R12-6-417.	Ownership of collections
R12-6-418.	Disposition of human interments

**ARTICLE 5. DUTY TO REPORT DISCOVERIES**

Section	
R12-6-501.	General application
R12-6-502.	Reporting discoveries
R12-6-503.	Taking steps to secure the preservation of a discovered site

**ARTICLE 6. AUTHORITY TO WAIVE REGULATIONS**

Section	
R12-6-601.	Waiver of regulations

**ARTICLE 7. RULES OF PRACTICE AND PROCEDURE BEFORE THE DIRECTOR**

Section	
R12-6-701.	Scope of Article
R12-6-702.	Definitions
R12-6-703.	Appearance and practice before the Director
R12-6-704.	Filing; service
R12-6-705.	Amendments
R12-6-706.	Time computations; enlargement
R12-6-707.	Commencement of proceedings; notice of hearing
R12-6-708.	Answer to notice of hearing
R12-6-709.	Conferences; continuance of hearings
R12-6-710.	Depositions
R12-6-711.	Hearing officers
R12-6-712.	Hearing
R12-6-713.	Decisions
R12-6-714.	Rehearing

**ARTICLE 1. GENERAL**

**R12-6-101. Definitions**

The following definitions shall apply in this Chapter unless the context requires otherwise:

1. "Affinity" means the condition of relationship established through membership in a common cultural group.
2. "Applicant" means an institution, organization or corporation organized for scientific, research, or land-use planning purposes that seeks to obtain a permit.
3. "Archaeological site" means any area with material remains of past Indian or non-Indian life or activities that are of archaeological interest, including without limita-

tion, historic or prehistoric ruins, burial grounds, and inscriptions made by human agency.

4. "Archaeological specimen" is defined in A.R.S. § 41-841.
5. "Collect" means to remove an object from its location without disturbing the ground at or around that location.
6. "Collection survey" means a survey that may, but need not, involve the actual collection of archaeological or paleontological specimens.
7. "Director" means the Director of the Arizona State Museum or an official designee of the Director.
8. "Excavate" means to effect any disturbance of the ground, including movement of earth or stone.
9. "Excavation" means a field activity involving ground disturbance for the purpose of intensive examination of subsurface remains, including testing for the purpose of site evaluation.
10. "Explore" means to pursue any activity with the purpose of locating, recording, or investigating any archaeological or paleontological site.
11. "Kinship" means the condition of relationship by traceable descent from a common ancestor.
12. "Lands owned or controlled by the state" means lands owned or controlled by the state of Arizona or by any agency, instrumentality, or political subdivision of the state of Arizona, including any county or municipal corporation.
13. "Non-collection survey" means a survey that does not include the collection of archaeological or paleontological specimens.
14. "Paleontological site" means any area in which paleontological specimens are found.
15. "Paleontological specimen" means a fossilized plant or animal or fossilized evidence of a plant or animal, such as a footprint.
16. "Permit" means an Arizona Antiquities Act Permit for Archaeological or Paleontological Investigations on Lands Owned or Controlled by the State as required by A.R.S. § 41-841.
17. "Permittee" means an institution, organization, or corporation to which a permit is issued.
18. "Preservation" means permanent protection from disturbance of an archaeological or paleontological site in situ, or scientific data recovery to preserve the information and specimens contained in the site.
19. "Principal investigator" means the person with overall administrative responsibility for a project.
20. "Project director" means the person immediately in charge of directing all phases of a project.
21. "Public repository" or "repository" means an institution that permanently houses and provides curatorial services for scientific or historical collections and records for the benefit of the public.
22. "Survey" means an activity with the purpose of locating, identifying, and evaluating archaeological or paleontological sites without causing any disturbance of the ground.

**R12-6-102. General coverage**

- A. The rules and regulations set forth in this Chapter shall be applicable to all persons, institutions, organizations, or corporations who seek to undertake those activities set forth in A.R.S. § 41-841.
- B. No person, institution, organization, or corporation shall undertake any activity proscribed in A.R.S. § 41-841 until a permit is first secured from the Director of the Arizona State Museum.

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**ARTICLE 2. PERMIT APPLICATION AND REVIEW**

**R12-6-201. Types of permits issued**

- A. A "Project-specific Permit" is issued for a single survey or excavation project to be conducted at a location specified in the permit application. A project-specific permit is valid for no more than one year from the first day of the effective period of a permit.
- B. A "Blanket Permit" is issued to allow more than one survey to be conducted under a single permit without specification in the application of the exact areas to be surveyed. A blanket permit is issued only for survey and is valid for no more than one year from the first day of the effective period of a permit. Only a project for which all reporting requirements, including a final report, will be completed within 90 days of the initiation of the project may be undertaken using a Blanket Permit.

**R12-6-202. Permit application requirements**

- A. Except as discussed in subsection (C) below, no permit shall be issued until written application is made to the Director.
- B. A permit application shall include the following:
  - 1. An indication of whether the application is for a project-specific permit or a blanket permit.
  - 2. The official name of the applicant and the address of applicant's headquarters or principal place of business.
  - 3. The name, title, address, and telephone number of the principal investigator for the permit. A current curriculum vitae for this individual shall be included with the application unless a current vitae is already on file at the Arizona State Museum.
  - 4. The name and title of the project director. A blanket permit application shall list all project directors who may be covered under the permit. A current curriculum vitae for each project director shall be included with the application unless a current vitae is already on file at the Arizona State Museum.
  - 5. The type or types of investigations for which permission is requested, selected from the following list:
    - a. archaeological non-collection survey
    - b. archaeological collection survey
    - c. archaeological excavation
    - d. paleontological non-collection survey
    - e. paleontological collection survey
    - f. paleontological excavation
  - 6. If a permit application requests authorization for collection or excavation, the application shall name the public repository in which all collected archaeological or paleontological specimens and all project records will be preserved in perpetuity. If the public repository is an institution other than the applicant institution, a copy of a signed curation agreement between the applicant and the repository shall be included with the permit or already be on file at the Arizona State Museum.
  - 7. The location of proposed investigation. Blanket permit applications may request survey authority effective for the entire state, or may restrict the request to a portion of the state. Project-specific permit applications shall specify the location of the proposed project. If the project is on surveyed lands, the description shall be by subdivision of the Public Lands Surveys.
  - 8. A project-specific permit application that requests authorization for survey shall include a general description of the work for which the permit is requested. For any project, the Director may require a more detailed research design, plan of work, or project budget.
  - 9. A project-specific permit application that requests authorization for excavation or testing must include a detailed

research design and a statement of total project costs which includes the proportion of those costs allocated for the curation of materials recovered.

- 10. The application shall propose a period during which the investigations would be conducted.
- 11. The application shall propose a date by which a project report will be delivered to the Arizona State Museum. If collections are made under a permit, a statement from the repository acknowledging receipt of all project materials in satisfactory condition must also be delivered by this date.
- 12. The application shall include a description of the provisions that will be made by the applicant for publication or other distribution of the results of all work conducted under the permit.
- 13. Unless such a document is already on file at the Arizona State Museum, the application shall be accompanied by a current statement of the nature and legal status of the applicant institution, organization or corporation, its scientific affiliations, and a description of the general scope and character of its activities and objectives.
- 14. The application shall be signed and dated by the person with general responsibility for the activities carried out under the permit, or an official designee of this individual.
- C. The Director may issue a permit in the absence of a completed, written application where a delay could cause damage to an archaeological or paleontological site or where the interests of the state would be served by such prompt action. Where a permit is issued under such emergency conditions, a completed, written application in the form prescribed in subsection (B) above shall be submitted within 30 days after issuance of the permit, and the failure to provide such application shall be a basis for revoking the permit.

**R12-6-203. Review of permit applications**

- A. Criteria. A permit application is reviewed by the Director based on the following criteria:
  - 1. The adequacy of the facilities of the applicant for purposes of satisfying these regulations.
  - 2. The quality of the work performed in the past by the applicant.
  - 3. The applicant's record of compliance with the Arizona Antiquities Act and regulations promulgated under the Act.
  - 4. The professional qualifications of the principal investigator, including a demonstrated competence in managing and administering research projects.
  - 5. The professional qualifications of the project director, including for archaeological projects:
    - a. A graduate degree in anthropology or archaeology, or equivalent training or experience.
    - b. A demonstrated ability to plan and conduct research based on contemporary archaeological method and theory.
    - c. At least four months of supervised field experience in survey, four months in excavation, and at least four months additional experience in artifact identification and the analysis and synthesis of archaeological data.
    - d. At least one year of full-time professional experience at a supervisory level in the study of archaeological remains.
  - 6. The professional qualifications of the project director, including for paleontological projects:
    - a. A graduate degree in paleontology or geology, or equivalent training or experience.

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- b. A demonstrated ability to plan and conduct research based on contemporary paleontological method and theory.
- c. At least four months of supervised paleontological field experience and at least four months additional experience in the identification, analysis, and synthesis of paleontological data.
- d. At least one year of full-time professional experience at a supervisory level in the study of paleontological remains.

- 7. The adequacy of the named repository if a repository is required.
- 8. The effect the proposed work would have on the archaeological or paleontological sites investigated.

**B. Review procedures**

- 1. A permit application is reviewed by the professional staff of the Arizona State Museum who shall make a recommendation to the Director.
- 2. The final decision to grant or deny a permit rests with the Director.
- 3. The Director may request additional information from the applicant in order to evaluate the application.
- 4. If a permit is requested for excavation, the Director may request comment on the application from the agency, instrumentality, or political subdivision of the state that has jurisdiction over the land.
- 5. The Director may request comment on the application from Indian or other cultural groups that may be affected by or particularly concerned with activities conducted under the permit.
- 6. The Director may request a peer review of the application, and may request comments from the State Historic Preservation Officer or affected individuals, institutions or organizations.
- 7. Completed permit applications shall be approved or denied by the Director within thirty days of their receipt by the Arizona State Museum, but passage of more than 30 days shall not give the applicant an automatic right to receive a permit.
- 8. If a permit is granted, a copy of the permit signed by the Director shall be sent to the applicant along with a copy of these regulations.
- 9. If a permit is denied, a written statement of the reasons for denial signed by the Director shall be sent to the applicant.

**R12-6-204. Permits**

- A. A permit shall be issued in writing by the Director and shall include the following:
  - 1. The type of permit.
  - 2. The name of the permittee.
  - 3. The date of the permit application.
  - 4. The name, title and address of the principal investigator for the permit.
  - 5. The names of the project director or project directors.
  - 6. The type or types of archaeological or paleontological investigations for which the permit is granted.
  - 7. If a permit authorizes collection or excavation, the name of the public repository in which all collected specimens and project records will be preserved in perpetuity.
  - 8. The location of permitted activity.
  - 9. The effective period of the permit, which represents the period during which the field work may be conducted.
  - 10. The permit report due date, which represents the date by which a project report and, if necessary, a repository receipt shall be delivered to the Arizona State Museum.

- 11. Any special conditions that may be required by the Director.
  - 12. The permit shall be dated and signed by the Director.
- B. A permit need not be granted under the exact conditions requested in the application.
  - C. Any use of a permit to conduct archaeological or paleontological investigations on lands owned or controlled by the state constitutes acceptance of the conditions of the permit and of these regulations.

**R12-6-205. Amendments to permits**

- A. Portions of a permit may be amended at the discretion of the Director, as follows:
  - 1. The principal investigator and/or project directors may be changed.
  - 2. The project location may be changed.
  - 3. The permit report due date may be extended.
  - 4. Special conditions of the permit may be changed.
- B. Requests for amendments to the permit shall be made in writing to the Director.
- C. An amendment to a permit is made through a letter signed by the Director and is effective immediately once it has been signed. A copy of any amendment shall be sent to the permittee.

**R12-6-206. Permit revocation**

- A. A permit may be revoked by the Director at any time for the following reasons:
  - 1. Failure to begin work under a project-specific permit within six months after it is granted.
  - 2. Failure to diligently pursue such work once it has been started.
  - 3. Failure to meet professionally accepted standards for archaeological or paleontological investigations in the permitted work as described in R12-6-303 and R12-6-304.
  - 4. Failure to comply with the conditions governing the permit as detailed in these regulations, including the conditions prescribed in R12-6-415.
  - 5. Failure to comply with the regulations of the State Land Department in working on state land.
  - 6. Failure to comply with applicable state or federal law in the conduct of the permitted work.
  - 7. Failure to provide a completed, written application as required by subsection (C) of R12-6-202.
- B. Except as provided in paragraphs (1) and (2) below, no revocation will be effective until the permittee is first provided notice and an opportunity for a hearing pursuant to Article 7 of these regulations.
  - 1. Where the Director finds that public health, safety or welfare imperatively requires emergency action, and incorporates a finding to that effect in his order, summary suspension of a permit may be ordered pending proceedings for revocation or other action.
  - 2. Where the ground for revocation of permit is that set forth in paragraph (7) of subsection (A) above, no hearing either before or after revocation, is required.
- C. An order of revocation properly issued by the Director without prior notice or hearing is effective upon mailing by certified mail, return receipt requested, to the permittee's address as shown by the records of the Director.

**ARTICLE 3. CONDITIONS FOR WORK UNDER PERMITS**

**R12-6-301. General conditions of field work**

- A. All field work shall be done during the effective period of the permit.

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- B. Surveys and excavation shall be conducted in such a manner as to meet current professional standards as described in R12-6-303 and R12-6-304.
- C. Unless specific alternative arrangements are approved in writing by the Director, a permittee receiving a permit for excavation shall, after completion of the fieldwork, restore lands upon which it has worked, to the satisfaction of the state officer in charge.
- D. Carrying permits and inspection of field work.
  - 1. Except as provided in paragraph (2) below, each field crew working under a permit shall, at all times, carry a copy of the permit authorizing the work being conducted. If no member of the field crew is named on the permit as the principal investigator or project director, the permit shall be accompanied by a letter signed by the principal investigator or project director that specifically authorizes at least one member of the field crew to work under the permit.
  - 2. A field crew working under a permit is not required to carry a copy of the permit if the permit has not yet been received and the permit was either issued on an emergency basis, as provided for in subsection (C) of R12-6-202, or approval has been otherwise obtained from the Director to begin work before receipt of the permit. In either case the permittee shall take reasonable steps to obtain a copy of the permit as quickly as possible.
  - 3. The Director may examine at any time the permit of any person claiming privileges granted by a permit and may fully examine all work being conducted under the permit, including examination of specimens and records obtained during the project.
  - 4. Any law enforcement officer with proper jurisdiction, and any officer in charge of lands owned or controlled by the state may at any time examine the permit of any person claiming privileges granted by a permit and may fully examine all work being conducted under the permit.

**R12-6-302. Blanket permit project notification**

- A. Before any project is conducted under the authorization of a blanket permit, a written notification of the work to be conducted shall be sent to the Director that includes the following information:
  - 1. The name of the permittee.
  - 2. The permit number under which the work is to be conducted.
  - 3. The name of the project director.
  - 4. The date of the notification.
  - 5. The period during which field work will be conducted.
  - 6. The project sponsor, project name, and when appropriate, the project number.
  - 7. The project location.
- B. No acknowledgement or other approval of this notification need be obtained for work to begin.

**R12-6-303. Survey**

Survey may be conducted with different levels of intensity as appropriate to research goals and management requirements. The following standards apply to all permitted surveys:

- 1. Prior to the initiation of field studies the temporal, cultural and functional classes of archaeological or paleontological sites likely to be found within the project area shall be identified and current research questions for the area shall be reviewed.
- 2. A field strategy appropriate to identify the classes of remains likely to be found and to contribute to an understanding of the history, prehistory or paleontology of the area shall be formulated.

- 3. The intensity of field inspection shall be dependent upon the objectives of the survey. However, in all clearance surveys conducted in connection with proposed or approved actions that would result in significant ground disturbance:
  - a. The level of survey intensity shall be sufficient to ensure identification of all sites visible on the surface of the ground.
  - b. Where appropriate, the survey shall provide for methods to maximize the likelihood that classes of sites not amenable to identification through survey will be found through use of such techniques as ethnographic study, consultation with artifact collectors or rock hounds, and remote sensing. When subsurface testing appears necessary to identify sites in the area, an excavation permit shall be required.

**R12-6-304. Excavation**

The following standards apply to all permitted excavations:

- 1. A research plan shall be developed for each excavation project. The plan shall identify specific project goals and take into account the relevant research questions for the classes of sites to be excavated. It shall identify field techniques and analytical strategies to be employed that are appropriate to achieve these research goals. If portions of a site can be preserved in place, this shall be considered in design of excavation projects.
- 2. An excavation program shall employ methods that will ensure full, clear, and accurate descriptions of all excavated contexts. To the extent feasible, the methods shall take into account the possibility that future researchers will need to use the recovered data to address problems not recognized at the time the data were recovered. Stratigraphic and associational relationships, environmental relationships, excavation techniques, recording methods and analytic techniques shall be described in such a way as to allow future researchers to reconstruct what was done, what was observed, and why.
- 3. In order for recovered data to be useful, it shall be made available to scholars and planners in usable forms. Normally, the following products are expected from an excavation program:
  - a. Raw data in the form of field notes, journals, photographs, data recording forms, and where appropriate, magnetic tapes of data that are completely documented with respect to format and contents.
  - b. Digested data in the form of tables, charts, graphs and, where appropriate, computer generated tabulations or manipulations of the data.
  - c. Scholarly and other articles or monographs utilizing the results of the work for analytic or public-interpretive purposes.
- 4. To the extent feasible, excavation programs shall provide for public participation, through arrangements for public inspection of the work in progress, the use of volunteers, and cooperation with local educational programs.

**R12-6-305. General reporting requirements**

- A. For each project-specific and blanket permit, and for each project conducted under a blanket permit, the permittee shall submit a separate report and separate sets of records, unless otherwise authorized in writing by the Director.
- B. A set of basic records described in R12-6-306 shall be completed for each project.
- C. A management report, as described in R12-6-307, is required for each clearance survey project that involves less than 640 acres or less than 10 linear miles.



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- D. A research report, containing the information specified in R12-6-308, is required for every project that does not submit a management report. This includes all excavation projects, surveys greater than 640 acres or more than 10 linear miles, and non-clearance survey projects regardless of size.
- E. A blanket permit summary report, as described in R12-6-309, is required for each blanket permit.
- F. All project records and reports shall be delivered to the Director on or before the permit report due date.
- G. Each set of records and reports sent to the Director shall be accompanied by a separate letter or form with the following information:
  - 1. The name of the permittee.
  - 2. The permit number to which the records apply.
  - 3. For blanket permits, the project name, project sponsor and project number if available.
  - 4. A list of the records and reports being submitted.
- H. All project and summary reports shall be typed or otherwise printed.
- I. All project and summary reports shall be submitted in two copies.

**R12-6-306. Basic records**

- A. A permittee shall submit typed, completed Arizona State Museum Site Cards (or alternate forms approved in writing by the Director) for all sites located or examined by the survey or excavation project. Site cards shall be updated for sites that have been previously recorded.
- B. The permittee shall submit a completed Arizona State Museum Site Inventory Form or an alternate form that has been approved in writing by the Director.
- C. The following survey records shall be submitted for each survey project:
  - 1. A typed, completed Arizona State Museum Survey Project Form or an alternate form that has been approved in writing by the Director. This form describes the survey area and methods. This form shall be completed regardless of whether any sites were located by a survey.
  - 2. Originals or copies of portions of the U.S.G.S. 7.5' or 15' maps showing the area surveyed. These maps shall accompany the Survey Project Form. These maps shall clearly show the survey boundary and the location of each site located.

**R12-6-307. Information included in management reports**

- A. Introduction. The introduction shall identify the project sponsor, briefly describe the project for which clearance is desired, and list the permits authorizing archaeological work.
- B. Project location.
  - 1. A complete description of the project location shall be provided.
  - 2. Ownership of land shall be clearly indicated. Complex, multiple ownership situations shall be clarified through use of tables or coded maps.
  - 3. A map of the project area shall be supplied.
- C. Survey methods. A description of the survey methods including the intensity of the survey, the names of the individuals employed in the actual field work, and the dates of the field work.
- D. Archaeological or paleontological remains. A description of the archaeological or paleontological remains at each of the sites located or examined.
- E. Evaluation of effects of the proposed project. A full description of the probable effects of the proposed project on the identified site shall be presented. If possible, measures to minimize the destruction of remains shall be suggested. This information shall be present on a site-by-site basis or in tabular form.

- F. Evaluation of significance. An evaluation of significance in terms of the criteria for eligibility for the State and National Registers of Historic Places shall be provided for all archaeological sites that will or may be affected by the proposed project.

**R12-6-308. Information included in research reports**

- A. Abstract.
- B. Introduction
  - 1. The project sponsor shall be identified and the permits authorizing the work, the project personnel, the dates of the fieldwork, and a description of general project location and project goals shall be included.
  - 2. Project location.
    - a. A complete description of the project location shall be provided.
    - b. Ownership of land shall be clearly indicated. Complex, multiple ownership situations shall be clarified through use of tables or coded maps.
    - c. A map of the project area shall be supplied.
- C. Background to the study area
  - 1. Environmental description. General discussions of environmental settings may be brief and their content determined by the nature of the undertaking described in the report.
  - 2. Cultural-historical background. A discussion of a study area's prehistory and history need be presented only when it will aid in the understanding and evaluation of the reported research.
- D. Research plan
  - 1. Identification and justification of research goals, themes and questions shall be presented.
  - 2. New goals identified during course of research shall be discussed.
  - 3. Data gathering strategies selected for the research project shall then be related to these goals. The following topics shall be addressed:
    - a. Explanation of field strategy (e.g. rationale for sampling design).
    - b. Evaluation of investigation constraints that may bias the results, such as limitations of access or poor ground visibility.
    - c. Description of data collection techniques (such as crew spacing, screen size, and size of test pits).
    - d. Description and justification of classification methods, methods of chronological determination, specialized environmental studies, and other analytical methods and techniques.
- E. Archaeological or paleontological remains. A description of the archaeological or paleontological remains at each of the sites located or examined.
- F. Analysis of research results.
  - 1. Digested and analyzed data are presented in narrative and tabular form.
  - 2. Analyzed data are related to stated goals.
  - 3. Interpretation of perceived patterns.
- G. Additional requirements for research reports for clearance or mitigation projects.
  - 1. Evaluation of effects of the proposed project. A full description of the probable effects of the proposed project on the identified archaeological or paleontological sites shall be presented. If possible, measures to minimize the destruction of remains should be suggested. This information should be presented on a site-by-site basis or in tabular form.
  - 2. Evaluation of significance. An evaluation of significance in terms of the criteria for eligibility for the State and



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National Registers of Historic Places shall be provided for all of the archaeological remains that will or may be affected by the proposed project.

**R12-6-309. Blanket permit summary report requirements**

- A. In addition to the basic records and the management and research reports required for each survey project, each holder of a blanket permit must submit two copies of a summary report on or before the permit report due date.
- B. This report shall consist of a list of all projects conducted under the blanket permit. The summary report should list the following information for each project:
  1. The permit number.
  2. The project sponsor, project name, and where applicable, the project number.
  3. The date of the written notification of the work under the blanket permit as described in R12-6-302.
  4. A complete bibliographic reference, including the author, title and any publication information for all reports and other published and unpublished manuscripts describing the projects.
  5. If by the permit report due date there are reports for projects conducted under the authority of a blanket permit that have not been completed, a request for an extension of the permit report due date must be made to the Director.
- C. If no projects were conducted under the blanket permit, a letter indicating this fact shall serve as a blanket permit summary report.

**R12-6-310. Receipt from the repository**

If the project requires a repository and a repository other than the permittee is to be used, then on or before the permit report due date, the Director must receive a signed receipt from the repository indicating that the collections have been accepted by the repository in satisfactory condition.

**ARTICLE 4. DISPOSITION OF COLLECTIONS AND RECORDS**

**R12-6-401. Definitions**

The following definitions shall apply in this Article:

1. "Human remains" means all portions of a human body that remain preserved after funerary treatment and decomposition.
2. "Interment" means a collection of human remains from one or more individuals intentionally entombed or buried in the earth.
3. "Records" means all written, photographic, or otherwise encoded information obtained as part of the permitted activity. Records include, without limitation, field notes, field recording forms, photographic negatives and prints, maps, analysis records and reports.

**R12-6-402. Permits and repositories**

- A. An applicant for a permit requiring a repository must indicate in the application the public repository in which all archaeological or paleontological specimens and all records from the permitted project will be preserved in perpetuity. An applicant institution may use its own facilities for curation or may submit with its application a signed repository agreement with a public repository.
- B. No permit shall be issued where an application lists a repository that the Director determines is not a public repository or does not meet the standards for repositories established here. In evaluating the listed repository, the Director may require an inspection of the repository's curatorial facilities prior to issuing a permit.

**R12-6-403. Public repository**

A public repository must provide reasonable public access for exhibit or for study of the collections and records in its care, custody or control. A public repository must have a permanently employed professional curatorial staff appropriate to the size and scope of its collections.

**R12-6-404. Permanence of the repository**

Because the repository must agree to the curation of the specimens and records in perpetuity, there must be a reasonable expectation, as determined by the Director, that the repository will be able to continue to exist and adhere to these standards for the foreseeable future.

**R12-6-405. Repository agreements**

A repository agreement is a written statement from a public repository agreeing to serve as a repository for a permit applicant and to preserve in perpetuity all specimens and records produced in connection with projects undertaken by a permittee under state permit. The repository must also explicitly agree to abide by the curation standards established here.

**R12-6-406. Applicant institution repository**

The same curation standards apply to a permittee using its own facilities for curation as applies to a repository providing these facilities as a service. In either case, the repository institution must be public. Through acceptance or use of a permit, a permittee indicates its agreement to preserve all archaeological or paleontological specimens and all records in perpetuity and to abide by the standards established here.

**R12-6-407. Inspection of the repository**

The curatorial facilities, collections, and records obtained under a permit and preserved in the repository shall be available for inspection on request of the Director or a designated representative at any time during normal business hours.

**R12-6-408. Accession and documentation**

All specimens and records resulting from the permitted activity must be accessioned, inventoried, and fully documented by the repository. Accession and catalog records are considered to be part of the records that must be permanently preserved.

**R12-6-409. Conservation**

The repository must have access to adequate facilities and qualified personnel to apply conservation techniques necessary to prevent serious deterioration of specimens obtained in a permitted project. All specimens and records obtained in a permitted activity shall receive proper handling and treatment to ensure their preservation.

**R12-6-410. Storage**

- A. The repository must have adequate space in storage facilities with a controlled environment for the protection and preservation of its collections and records. All collections obtained under a permit must be stored under conditions that fully protect them from the elements and from vermin, that ensure their preservation, and guarantee their security and physical accessibility.
- B. Any repository charged with the care or custody of religious objects, human remains, or funerary offerings shall maintain them in keeping with the dignity and respect to be accorded all American Indian and other such objects or human remains, with due consideration for specific applicable cultural or religious traditions.

**R12-6-411. Temporary loans**

Temporary loans of collections or records obtained under a permit may be made to other institutions without permission from or notification to the Director, providing that all loan transactions are fully

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documented in the records of the repository, and the collections are returned within five years from the date of the original loan.

**R12-6.412. Transfer and disposal of collections**

Once accessioned, no specimens or records obtained under permit may be disposed of or transferred for a period of more than five years without written permission of the Director. Requests for any such disposal or transfer shall be made in writing to the Director, and shall include a description of the collections to be disposed of or transferred and the reasons for this action. The Director shall not approve requests for disposal of collections unless the materials have been adequately studied and recorded.

**R12-6.413. Dissolution of repository**

In the event that an institution housing collections from lands owned or controlled by the state is dissolved, all collections and records resulting from a permitted activity shall revert to the custody of the Arizona State Museum. In this eventuality, the Arizona State Museum may become claimant to the remaining assets of the institution to the extent of the costs incurred by the Arizona State Museum in the transfer of the collections and records from the repository.

**R12-6.414. Determination of failure to comply with requirements for repositories**

The Director shall determine whether a repository is in compliance with the requirements set forth herein and shall report to the head of the repository any substantial failure of the repository to comply with these requirements.

**R12-6.415. Failure to comply during the effective period of a permit**

If a repository for a permitted project should be determined to be out of compliance with these requirements during the effective period of a permit, the person in general charge of the permitted project shall be notified by the Director. In this case, it shall be the responsibility of the permittee to ensure that the conditions at the repository are promptly remedied so that the repository meets these standards. Alternately, the permittee may, with the consent of the Director, obtain a repository agreement with another repository and effect the transfer of all project collections and records to the new repository. If the Director determines that sufficient action has not been taken to meet these standards, the Director shall revoke the permit. Subsequent to the revocation of a permit, should a transfer of the collections be deemed necessary, the deficient repository shall be liable for the cost of this transfer.

**R12-6.416. Failure to comply after termination of a permit**

If a repository holding collections obtained under permit should be determined to be out of compliance at any time after the termination of the permit, at the discretion of the Director, the repository may be given a reasonable time period to correct the deficiencies, or the collections may be transferred to the Arizona State Museum or another repository as soon as is practicable. Should a transfer of the collections be deemed necessary, the deficient repository shall be liable for the cost of this transfer.

**R12-6.417. Ownership of collections**

All collections of archaeological or paleontological specimens and all project records that are acquired under the authority of a permit or that result from permitted activities remain the property of the state of Arizona regardless of the repository institution.

**R12-6.418. Disposition of human interments**

A. Whenever a human interment is excavated or otherwise disturbed in the course of a permitted excavation, the permittee shall proceed as follows:

1. Where the excavation or disturbance involves historic marked or identified interments, the permittee shall make

a reasonable effort to identify, locate and give written notice to individuals who can demonstrate direct kinship with the interred individuals.

2. Where the excavation or disturbance involves interments of human remains known by the permittee to have affinity to specific living groups or common cultural groups, the permittee shall make a reasonable effort to identify, locate and give written notice to leaders, officials or spokespersons for these groups. In the case of Indian tribes, notice shall be given to the recognized tribal governing body.
  3. Where the excavation or disturbance involves interments which the permittee cannot identify with a specific living group or common cultural group, the permittee shall cause a notice to be published once in a newspaper of general circulation published regularly at the State Capitol and once in a newspaper of like circulation in the county in which the interment is located.
- B. Written notice shall be transmitted by certified mail and shall be effective upon mailing. Published notice is effective on the last date of any required publication. The notice, whether written or published, shall:
1. State the name of the permittee.
  2. Inform the recipient of said notice of the opportunity to provide written comment on the disposition of the interred remains pursuant to the requirements of these regulations.
  3. State the address to which such written comment shall be sent.
  4. State the date by which the written comment must be received by the permittee.
- C. Written comments must be received by the permittee at the address specified in the notice within 90 days after the effective date of the notice. Written comments shall include the following:
1. The name and current mailing address of the commentator.
  2. A statement of the basis upon which the commentator claims direct kinship or affinity with the interred remains.
  3. Documentation of the commentator's claim of direct kinship or affinity with the interred remains. Documentation may include but is not restricted to: medical, governmental or church records of births and deaths; family trees; written compilation of oral kinship information; and citation of relevant archaeological evidence supporting the affinity of the specific living group or common cultural group.
  4. A statement of the opinions of the commentator concerning the disposition of the interred remains.
- D. Within 30 days after the last date for receiving any written comments, the permittee shall submit to the Director the following:
1. A written statement of efforts made by the permittee to provide notice to individuals and groups concerning the disposition of the interred remains. Where no written comments are timely received by the permittee, the permittee shall so advise the Director in this written statement, and the permittee need not submit the additional information required in paragraphs (2) and (3) below.
  2. Copies of all written comments received by the permittee.
  3. Written recommendations concerning:
    - a. Any commentator's claim of kinship or affinity.
    - b. The disposition of the interred remains.
- E. If no written comments are timely received by the permittee after reasonable efforts have been made to give notice, then the disposition of the remains shall be determined by the permittee

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in accordance with these regulations. Where written comments are received, final determination on disposition of the remains shall be made by the Director.

1. In making a final determination, the Director may consider any of the materials submitted to the permittee pursuant to subsection (C), including any written comments from individuals or groups.
  2. In considering any written comments, the Director may consider the extent to which the commentator's claim of direct kinship or affinity has been documented.
  3. The Director shall promptly notify all commentators and the permittee of his determination.
  4. The Director shall also determine whether the permittee's efforts to give notice were reasonable and shall advise the permittee in writing accordingly. Such determination shall consider the cultural and scientific value of the human remains and the cost to the permittee in locating interested individuals or groups. The Director may further require additional notice to be made and may postpone a final determination on disposition of the remains pending the receipt of any additional written comments resulting from this additional notice.
- E. Either the permittee or the Director may, but need not, consult with any individual or group to whom notice is sent or who submit written comments. Such consultation may occur at any time, and the procedure set forth in this Section shall not constitute a bar to such consultations.

**ARTICLE 5. DUTY TO REPORT DISCOVERIES**

**R12-6.501. General application**

- A. This Article does not apply to a permittee or any individual acting on behalf of a permittee while engaged in work at a site covered by an unexpired permit issued to the permittee.
- B. The phrase "survey, excavation or construction" as used in this Article is not limited to the technical definitions of "survey" or "excavation" contained in R12-6-101, but shall apply to those activities covered under A.R.S. § 41-844.

**R12-6.502. Reporting discoveries**

- A. The duty of the person in charge of any survey, excavation or construction on state, county, or municipal lands to report discoveries of any archaeological, paleontological or historic site or object, including human skeletal remains, shall be discharged by reporting the discovery as quickly as possible by the fastest practical means to the Director.
- B. In no case shall any such discovery go unreported for more than two working days.
- C. Any verbal report of discoveries shall be followed by a written statement mailed or otherwise delivered to the Director within two working days of the discovery.

**R12-6.503. Taking steps to secure the preservation of a discovered site**

- A. The duty of the person in charge to take all reasonable steps to secure the preservation of sites discovered shall be satisfied by immediately stopping all activity destructive to the site and by securing the site from vandalism, theft, erosion and other disturbance until the Director can evaluate the site and make recommendations for its preservation.
- B. The Director shall respond as soon as possible after the first report of a discovery.
- C. The Director shall respond in writing to reports within five working days of receipt of the written notice of the discovery. This response shall include a description of the steps that shall be taken to secure the preservation of the site.

**ARTICLE 6. AUTHORITY TO WAIVE REGULATIONS**

**R12-6.601. Waiver of regulations**

The Director may waive any regulation set forth in this Chapter upon a written determination that such waiver is necessary for the preservation of archaeological or paleontological sites, remains, or records, and that the interests of the archaeology of Arizona would best be served by such waiver. A written notice of any waiver of these regulations shall be mailed promptly to the affected permittee.

**ARTICLE 7. RULES OF PRACTICE AND PROCEDURE BEFORE THE DIRECTOR**

**R12-6.701. Scope of Article**

- A. These Rules of Practice and Procedure govern the procedures to be followed with respect to:
  1. Hearing upon denial of a permit.
  2. Hearing in connection with revocation of a permit.
- B. These rules shall be constructed to secure the just, speedy and inexpensive determination of every such proceeding.
- C. In connection with any particular proceeding, reference shall also be made to any special procedural requirements prescribed by statute or by other Articles in this Chapter, which special requirements, if applicable, shall govern.

**R12-6.702. Definitions**

In this Article, unless the context otherwise requires,

1. "Applicant" means an institution, organization or corporation organized for scientific, research or land use planning purposes which seeks to obtain a permit.
2. "Arizona State Museum" means that state museum referred to in A.R.S. § 15-1631 and which is directed and managed by the Arizona Board of Regents.
3. "Contested case" means any of the proceedings referred to in subsection (A) of R12-6-701.
4. "Director" means the Director of the Arizona State Museum or an official designee of the Director.
5. "Hearing Officer" means the person appointed by the Director pursuant to R12-6-711 to hear a contested case and make recommendations to the Director.
6. "Party" means the Arizona State Museum and each person named or admitted as a party in a contested case.
7. "Permit" means an Arizona Antiquities Act Permit for Archaeological or Paleontological Investigations on Lands Owned or Controlled by the state of Arizona as required by A.R.S. § 41-841 et seq.
8. "Person" means any individual, partnership, corporation, association or public or private organization.
9. "University Council" means the Head University Attorney for the University of Arizona or his duly appointed assistant.

**R12-6.703. Appearance and practice before the Director**

- A. Any person may appear in his own behalf or by counsel.
- B. The University Counsel shall act as the representative of the Arizona State Museum in any proceeding before the Director brought under this Article and shall have the duty to present evidence and arguments on behalf of the Arizona State Museum.
- C. When an attorney, other than the University Counsel, intends to appear before the Director, he shall promptly advise the Director of his name, address and telephone number and the address of the person on whose behalf the appearance is made.

**R12-6.704. Filing; service**

- A. All papers allowed or required to be filed with the Director shall be personally filed at the office of the Director or may be mailed, pursuant to subsection (D), to the Director of the Ari-

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zona State Museum, University of Arizona, Tucson, Arizona 85721. No papers shall be deemed filed until actually received by the Director.

- B. Unless otherwise provided by these rules, copies of all papers filed shall, at or before the time of filing, be served on the hearing officer, if any, the University Counsel and all parties to the proceeding.
- C. Whenever under these rules service is required or allowed to be made upon a party represented by an attorney, the service shall be made upon the attorney, unless service upon the party himself is ordered by the Director.
- D. Service upon the attorney, or upon the party, shall be made personally, or by mail, by enclosing a copy thereof in a sealed envelope and depositing same, postage prepaid, in the United States mail, addressed to the party to be served or his attorney at the address as shown by the records of the Director. Service by mail is complete upon mailing.
- E. All notices of hearings and final decisions issued by the Director shall be, when mailed, mailed by certified mail.
- F. Every paper filed with the Director under these rules shall be signed by the party filing it or by at least one attorney, in his individual name, who represents the party. The signature constitutes a certificate by the signer that he has read the paper, that to the best of his knowledge, information and belief there is good ground to support it, and that it is not interposed for delay.

**R12-6-705. Amendments**

Except where otherwise provided by Law or these rules, the Director may amend any notice of hearing or prior order issued by the Director or permit the amendment of any answer where justice requires such amendment.

**R12-6-706. Time computations; enlargement**

- A. In computing any period of time prescribed or allowed by these rules, by order of the Director, or by any applicable statute, the day of the act or event from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday or legal holiday. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation.
- B. When by these rules or by a notice given thereunder or by order of the Director, an act is required or allowed to be done at or within a specified time, the Director for cause shown may in his discretion, with or without a motion or notice, order the period enlarged, except that:
  - 1. After the expiration of the specified period the Director may permit the act to be done only upon motion made and only where the failure to act was the result of excusable neglect.
  - 2. In no event shall the Director extend the time for taking any action under subsection (A) of R12-6-707, or subsections (A) or (E) of R12-6-714.

**R12-6-707. Commencement of proceedings; notice of hearing**

- A. An applicant who is denied a permit by the Director without prior hearing or opportunity for hearing may file with the Director a request for hearing seeking review by the Director of the order of denial. Such a request for hearing must be filed with the Director within fifteen days of service of the letter or order to be reviewed and shall identify with specificity the action or order for which review is sought. If the party seeking review is represented by counsel, then the name, address and

telephone number of the attorney should be included in the request for hearing.

- B. In proceedings in which the Director is considering the revocation of a permit or upon the filing of a request for hearing under subsection (A), the Director shall issue a notice of hearing scheduling the matter for hearing in accordance with these rules.
- C. The parties in any hearing brought under this Article shall consist of at least the Arizona State Museum and either the applicant denied a permit or the permittee whose permit is sought to be revoked.

**R12-6-708. Answer to notice of hearing**

- A. In any notice of hearing issued by the Director, the Director may indicate that one or more parties may file an answer to the assertions contained in the notice of hearing. Even though not directed to do so, any party may file such an answer.
- B. Except where a different period is provided by the notice of hearing, the party directed to file an answer shall do so within twenty days after issuance of the notice of hearing. Where amendments to the assertions contained in the notice of hearing are made subsequent to the notice of hearing, one or more of the parties may be required to answer within a reasonable time the amended assertions.
- C. If a party fails to file an answer required by this rule within the time provided, such party shall be deemed in default and the proceeding may be determined against the party by the Director and one or more of the assertions contained in the notice of hearing may be deemed to be admitted.
- D. Any defenses not raised in the answer shall be deemed to be waived.

**R12-6-709. Conferences; continuance of hearings**

- A. The Director, on application of a party, or on his own motion, may call a conference with the parties at any time for the purpose of clarifying the procedural steps to be followed in a proceeding, or clarifying or limiting legal or factual issues involved in a proceeding.
- B. The Director, on his own motion, or upon motion of a party and for good cause shown may continue or reschedule any hearing before the Director.

**R12-6-710. Depositions**

- A. Any party desiring to take a deposition shall file a written motion, setting forth the reasons why such depositions should be taken, the name and address of the witness, the matters concerning which it is expected to question the witness, and the documents, if any, sought to be produced and the time and place proposed for the taking of the deposition.
- B. Any party desiring the issuance of a subpoena to compel the appearance of a witness or the production of documents at any hearing or deposition shall file a written ex parte application therefore setting forth the name and address of the witness, the matters concerning which it is expected to question the witness, the documents sought to be produced, and the time and place of the hearing or deposition.
- C. The Director may, in his discretion, issue an order permitting a deposition to be taken or issue a subpoena, or both, consistent with the purpose and requirements of A.R.S. § 41-1010(A)(4).

**R12-6-711. Hearing officers**

- A. The Director may appoint a hearing officer to hear any contested case. A hearing officer appointed by the Director may make all determinations and enter all orders and process which the Director is authorized to make or issue under these rules or any other order necessary for the orderly conduct of the hearing except orders on motions for rehearing, final decisions or other orders or process which the hearing officer is specifically

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prohibited from entering by these rules or by order of the Director.

- B. Any party in a proceeding before the Director may file an affidavit for change of hearing officer alleging any of the grounds set forth in A.R.S. § 12-409. An affidavit for change of hearing officer shall be filed within ten days after discovery that grounds exist for a change of hearing officer and in no event later than ten days before the date set for hearing. Copies of an affidavit filed under this subsection shall be served as provided in R12-6-704 and upon receipt of a copy thereof the hearing officer shall take no further action until the affidavit has been acted on by the Director, except that the hearing officer may make such temporary orders as may be absolutely necessary to prevent immediate and irreparable injury, loss or damage from occurring before the proceeding may be transferred to another hearing officer.
- C. Within 30 days after the conclusion of the proceeding, the hearing officer shall submit to the Director written recommendations which shall include proposed findings of fact, conclusions of law, and order. Before submitting his recommendations to the Director the hearing officer may submit a draft thereof to the parties for the purpose of hearing their comments and suggestions.
- D. The hearing officer's recommendations may be approved or modified by the Director. The Director's decision approving or modifying the hearing officer's recommendations shall be the final decision of the Director, subject to the filing of a motion for rehearing under R12-6-714.

**R12-6-712. Hearing**

- A. At any hearing, conduct which, in the discretion of the Director, is deemed contemptuous, shall be grounds for exclusion from the hearing.
- B. The failure of a party to appear at a scheduled hearing shall be treated as consent to the decision of the Director arising out of the hearing.

**R12-6-713. Decisions**

The final decision in a contested case before the Director shall be signed by the Director and shall state separately the findings of fact, conclusions of law and order of the Director. The decision may incorporate by reference, with or without modifications, the recommendations of the hearing officer.

**R12-6-714. Rehearing**

- A. Except as provided in subsection (G), any party in a contested case before the Director who is aggrieved by a decision rendered in such case may file with the Director, not later than ten days after service of the decision, a written motion for rehearing or review of the decision specifying the particular grounds therefor.
- B. A motion for rehearing under this rule may be amended at any time before it is ruled upon by the Director. A response may be

filed within ten days after service of such motion by any other party. The Director may require the filing of written briefs upon the issues raised in the motion and may provide for oral argument.

- C. A rehearing of the decision may be granted for any of the following causes materially affecting the moving party's rights:
  1. Irregularity in the proceedings before the Director or any order or abuse of discretion, whereby the moving party was deprived of a fair hearing;
  2. Misconduct of the Director, his employees or his hearing officer or the prevailing party;
  3. Accident or surprise which could not have been prevented by ordinary prudence;
  4. Newly discovered evidence which could not with reasonable diligence have been discovered and produced at the original hearing;
  5. Excessive or insufficient penalties;
  6. Error in the admission or rejection of evidence or other errors of law occurring at the hearing;
  7. That the decision is not justified by the evidence or is contrary to law.
- D. The Director may affirm or modify the decision or grant a rehearing as to all or any of the parties and on all or part of the issues for any of the reasons set forth in subsection (C). An order granting a rehearing shall specify with particularity the ground or grounds on which the rehearing is granted, and the rehearing shall cover only those matters so specified.
- E. The Director, within the time for filing a motion for rehearing under this rule, may on his own initiative order a rehearing or review of his decision for any reason for which he might have granted a rehearing on motion of a party. After giving the parties notice and an opportunity to be heard on the matter, the Director may grant a motion for rehearing, timely served, for reason not stated in the motion. In either case, the order granting such a rehearing shall specify the ground therefor.
- E. When a motion for rehearing is based upon affidavits, they shall be served with the motion. An opposing party may within ten days after such service serve opposing affidavits.
- G. If in a particular decision the Director makes specific findings that the immediate effectiveness of such decision is necessary for the immediate preservation of the public peace, health and safety, and that a rehearing or review of the decision is impractical, unnecessary or contrary to the public interest, the decision may be issued as a final decision without an opportunity for a rehearing or review. If a decision is issued as a final decision without an opportunity for rehearing, any application for judicial review of the decision shall be made within the time limits permitted for applications for judicial review of the Director's final decision.